

OVERVIEW OF BANKRUPTCY CODE CHANGES

(Selected Highlights of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005)

Definitions

- § 101
 - “[D]ebt relief agency’ means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration . . .”
 - “[A]ssisted person’ means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than \$150,000.”

Eligibility

- § 109(h)
 - An individual is not eligible for relief unless, within 180 days of the filing of her petition, she received “an individual or group briefing” from a nonprofit budget and credit counseling agency approved by the U.S. Trustee
 - Exceptions:
 - The U.S. Trustee determines that no adequate counseling services are available
 - The debtor files a certification that
 - describes “exigent circumstances” that merit a waiver
 - states that the debtor was unable to obtain counseling services within five days before filing her petition
 - Debtor is “incapacitated,” “disabled,” or on active military duty in a combat zone
 - If the debtor is unable to obtain counseling services within five days before filing her petition, she must complete counseling within 30 days after filing her petition (plus an additional 15 days for cause)
 - The debtor must file certificate from the approved nonprofit budget and

credit counseling agency describing the services provided (§ 521(b)(1))

- The debtor must also file a copy of any debt repayment plan developed during counseling (§ 521(b)(2))

Notice

- **§ 342**
 - If a creditor has requested that correspondence be sent to it at a certain address in at least two communications sent to the debtor within 90 days before the debtor files her petition, the debtor must use that address to send any required notice to the creditor
 - In an individual chapter 7 or 13 case, a creditor may file with the Court and serve on the debtor a notice of the address at which the creditor would like to receive notice in the case
 - A creditor may file with the Court a notice of address to be used by all bankruptcy courts (or particular bankruptcy courts) in all chapter 7 and 13 cases in which the creditor is involved
 - If notice is not sent to the correct address, it is not effective until brought to the creditor's attention
 - Until a creditor receives effective notice, the Court cannot impose a monetary penalty for violation of the stay or for failure to turnover property of the estate

Automatic Stay

- **§ 362(b)(2)**
 - The automatic stay does not apply to various mechanisms and proceedings to enforce domestic support obligations, including the following new exceptions –
 - proceedings concerning child custody or visitation, for the dissolution of a marriage, or regarding domestic violence
 - withholding income for payment of a domestic support obligation
 - withholding, suspending, or restricting a driver's, professional,

occupational, or recreational license

- reporting overdue support to a consumer reporting agency
- intercepting a tax refund
- enforcing a medical obligation
- **§ 362(b)(19)**
 - The automatic stay does not apply to automatic wage deductions for repayment of loans from qualified pension, profit-sharing, stock bonus, and similar plans
- **§ 362(b)(20)**
 - The automatic stay does not apply to an act to enforce a lien against or security interest in real property for two years following entry of an order under § 362(d)(4) (more on that below)
 - The debtor may move for relief from an order under § 362(d)(4) based upon changed circumstances or other good cause
- **§ 362(b)(21)**
 - 30 days after the debtor files her petition, the automatic stay does not apply to any act to enforce a lien against or security interest in real property if:
 - The debtor is ineligible under § 109(g)
 - The case was filed in violation of a court order in a prior case prohibiting the debtor from filing another case
- **§ 362(b)(22)**
 - 15 days after the debtor files her petition, the automatic stay does not apply to an eviction proceeding if the landlord obtained a judgment for possession before the debtor filed her petition
 - The debtor may contest the applicability of § 362(b)(22) (§ 362(l))

- **§ 362(b)(23)**
 - The automatic stay does not apply to an eviction proceeding based on endangerment of the property or the illegal use of controlled substances on the property
 - The landlord must file with the Court and serve on the debtor a certification that:
 - such an eviction proceeding has been filed or
 - the debtor has engaged in such behavior within 30 days of the filing of her petition
 - The debtor may contest the landlord's certification (§ 362(m))
- **§ 362(c)(3)**
 - If an individual debtor files a chapter 7, 11, or 13 case within one year of the dismissal of an earlier case, the automatic stay terminates 30 days after the filing of the debtor's petition
 - Upon motion by a party in interest, the Court may extend the stay if it determines the filing was in good faith as to the creditor(s) to be stayed
- **§ 362(c)(4)**
 - If an individual debtor files a second chapter 7, 11, or 13 case within one year of the dismissal of two or more earlier cases, the automatic stay never goes into effect
 - Upon motion by a party in interest, the Court may impose the stay if it determines the filing was in good faith as to the creditor(s) to be stayed
- **§ 362(d)(4)**
 - A creditor is entitled to relief from the stay if:
 - The debtor transfers mortgaged real property without the consent of the mortgagee or court approval
 - The debtor has filed multiple bankruptcies affecting mortgaged real property

- When recorded, an order granting *in rem* relief from stay is binding on all owners for two years from entry
- **§ 362(h)**
 - In an individual case, if the debtor fails to file her statement of intention within the time allowed (§ 521(a)(2)(A)) or to take the action specified in her statement of intention within the time allowed (§ 521(a)(2)(B)), the automatic stay is terminated with respect to personal property securing a claim, and the property is no longer property of the estate
 - The automatic stay is **not** terminated if the debtor's stated intent is to reaffirm the debt on its original terms and the creditor refuses to agree to reaffirmation on those terms
 - Interestingly, absent a Court-ordered extension, the time allowed for the debtor to take the action specified in her statement of intention (30 days after her § 341 meeting) will always end before the time allowed for the debtor to take similar action under § 521(a)(6) (45 days after her § 341 meeting)
 - On the trustee's motion within the time allowed for debtor to file her statement of intention and to take the action specified in her statement of intention, and after notice and a hearing, the Court may order adequate protection of the creditor's interest and order the debtor to turn the property over to the trustee
 - If the Court denies the trustee's motion, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion

Secured Claims

- **§ 506(a)(2)**
 - In an individual chapter 7 or chapter 13 case, the value of personal property securing an allowed claim is its replacement value, without deduction for costs of sale or marketing
 - With respect to personal property acquired for personal, family, or household purposes, "replacement value" is the retail price for property of the same age and condition

Priority Claims

- **§ 507(a)(1)**
 - “Domestic support obligations” have the first priority in distribution, with support obligations owed to or recoverable by a spouse, former spouse, or child given priority over support obligations assigned to or owed directly to a governmental unit
 - The trustee’s allowed administrative expenses must be paid before payment of domestic support obligation claims

Debtor’s Duties

- **§ 521(a)(1)(B)**
 - In addition to her schedules and statement of financial affairs, an individual debtor must file:
 - a certificate that the debtor was given the notice required by § 342(b)
 - all pay stubs the debtor received within 60 days before the filing of her petition
 - an itemized statement of the debtor’s “monthly net income”
 - a statement of “reasonably anticipated” increases in the debtor’s income or expenditures within one year after the filing of her petition
- **§ 521(a)(6)**
 - In an individual chapter 7 case, the debtor may not retain possession of personal property subject to a purchase money security interest unless within 45 days after the § 341 meeting she either enters into a reaffirmation agreement with the secured creditor or redeems the property
 - If the debtor fails to do either within the 45-day period, the automatic stay is terminated with respect to the property, and the property is no longer property of the estate
 - On the trustee’s motion within the 45-day period, and after notice and a hearing, the Court may order adequate protection of the creditor’s interest and order the debtor to turn the property over to the trustee

- **§ 521(e)(2)(A)**

- At least seven days prior to the § 341 meeting of creditors, the debtor must provide a copy of her most recent tax return to the trustee and to any creditor requesting a copy
- If the debtor fails to do so, the Court “shall” dismiss the case (unless . . .)
- May apply only to individual debtors (?)

- **§ 521(f)(1) - (3)**

Upon the request of the Court, the U.S. Trustee, or any other party in interest, an individual chapter 7, 11, or 13 debtor must file with the Court:

- any tax return for a tax year ending while the case is pending
- any tax return for a tax year that ended within three years before the debtor filed her petition
- any amendments filed with respect to any of the above returns

- **§521(f)(4)**

- Annually, a chapter 13 debtor must file a statement of income and expenses and a statement of monthly income showing how the debtor’s income, expenses, and monthly income were calculated
- The report must be filed not later than 45 days before each anniversary of the confirmation of the debtor’s plan

- **§ 521(g)**

- The report required by § 521(f)(4) must disclose –
 - the amount and sources of the debtor’s income
 - the identity of anyone sharing responsibility for support of the debtor’s dependents
 - the identity of anyone contributing to the debtor’s household and the amount contributed

- **§ 521(I)**

- If an individual chapter 7 or chapter 13 debtor fails to file any of the information required under § 521(a)(1), the case will be “automatically dismissed”
- The debtor may request an additional 45 days to file the required information
- On the trustee’s motion, the Court may “decline to dismiss” the case if the debtor “attempted in good faith” to file her pay stubs

Exemptions

- **§ 522(b)(3)**

- The debtor may claim the exemptions available under the laws of the state in which she was domiciled for the 730 days (was 180) prior to the filing of her petition OR
- If the debtor was not domiciled in a single state for the 730 days prior to the filing of her petition, she may claim the exemptions available under the laws of the state in which she was domiciled for the 180 days prior to the filing of her petition OR
- If the debtor was not domiciled in a single state for the 180 days prior to the filing of her petition, she may claim the exemptions available under the laws of the state in which she was domiciled for a longer portion of the 180 days prior to the filing of her petition than in any other state

- **§ 522(o)**

- The value of the debtor’s interest in her homestead will be reduced to the extent that value is attributable to her disposition of any nonexempt property within the 10 years prior to the filing of her petition with the intent to hinder, delay, or defraud a creditor

- **§ 522(p), (q)**

- No need to worry about these homestead limitations until South Dakota’s homestead exemption exceeds \$125,000

- **§522(f)(4)**

- “Household goods” subject to lien avoidance pursuant to § 522(f)(1)(B) are defined as clothing; furniture; appliances; 1 radio; 1 television; 1 VCR; linens; china; crockery; kitchenware; educational materials and equipment for minor dependent children; medical equipment and supplies; furniture exclusively for minor children, elderly, or disabled dependents; personal effects; 1 personal computer and related equipment
- “Household goods” subject to lien avoidance pursuant to § 522(f)(1)(B) do **not** include works of art (except . . .); electronic equipment with an aggregate value of more than \$500 (not counting that included in the above definition); antiques with an aggregate value of more than \$500; jewelry with an aggregate value of more than \$500 (not counting wedding rings); or computers (not counting that included in the above definition), motor vehicles, tractors, lawn tractors, boats, or motorized recreational devices, conveyances, vehicles, watercraft, or aircraft

Exceptions to Discharge

- **§523(a)(2)(C)**

- The presumption of nondischargeability for “luxury goods or services” is expanded
 - The amount that must be owed the creditor is reduced from \$1,225 to \$500
 - The period of time within which the debt may be incurred is increased from 60 to 90 days before the debtor files her petition
- The presumption of nondischargeability for “cash advances” is likewise expanded
 - The amount that must be owed the creditor is reduced from \$1,225 to \$750
 - The period of time within which the debt may be incurred is increased from 60 to 70 days before the debtor files her petition

- **§ 523(a)(8)**

- “Qualified education loans” (as defined by the Internal Revenue Code) will

be nondischargeable

- **§ 523(a)(15)**
 - All property settlements that do not fall within the parameters of § 523(a)(5) will be nondischargeable under § 523(a)(15)

Discharge

- **§ 524**
 - For a reaffirmation agreement to be effective, the debtor must receive a lengthy list of disclosures provided in § 523(k)
 - Prior to filing a reaffirmation agreement, the debtor must sign a statement disclosing her income, actual monthly expenses, and the balance available to pay the reaffirmed debt
 - If the debtor's statement reflects a balance available to pay the reaffirmed debt that is less than the scheduled payments on the reaffirmed debt, it "shall be presumed" that the agreement is an undue hardship on the debtor
 - The presumption does not apply to reaffirmation agreements with a credit union
 - The presumption last for 60 days from the date the agreement is filed
 - The Court must "review" the presumption
 - The presumption may be rebutted by the debtor's statement in writing identifying additional sources of funds to make the scheduled payments
 - After notice and a hearing concluded before the entry of the debtor's discharge, the Court may disapprove the agreement
 - A creditor may accept payments from the debtor before and after filing a reaffirmation agreement
 - A creditor may accept payments under a reaffirmation agreement that the creditor believes in good faith to be effective

Restrictions of Debt Relief Agencies

- **§ 526**
 - A debt relief agency must not –
 - fail to perform agreed upon services
 - make untrue or misleading statements
 - misrepresent the services to be performed or the benefits and risks of filing for bankruptcy
 - advise a client to incur more debt in contemplation of filing for bankruptcy
 - A debt relief agency may be ordered to return its fee, pay actual damages, and pay reasonable attorney's fees and costs if it –
 - intentionally or negligently fails to comply with §§ 526, 527 and 528
 - intentionally or negligently fails to file required documents and a client's case is converted or dismissed
 - intentionally or negligently disregards "material requirements" of Title 11 or the Federal Rules of Bankruptcy Procedure

Disclosures Required of Debt Relief Agencies

- **§ 527**
 - A debt relief agency must provide lengthy disclosures specified in this section
 - A debt relief agency must maintain copies of all such disclosures for two years

Requirements for Debt Relief Agencies

- **§ 528**
 - Within five days of providing services to an assisted person, and prior to filing a petition for relief, a debt relief agency must enter into a written

agreement with an assisted person that “clearly and conspicuously” explains the services to be rendered, the fees for such services, and the terms of payment and provide the assisted person with a copy of such contract

- A debt relief agency must include in all advertising for bankruptcy assistance services the statement: “We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.”

Property of the Estate

- **§ 541**
 - “Property of the estate” does not include –
 - certain funds placed in an education retirement account (§ 530(b)(1), IRC)
 - certain funds used to purchase a tuition credit or certificate or contributed to an account under a qualified State tuition program (§ 529(b)(1), IRC)
 - ERISA-qualified retirement plans
 - government retirement plans (§ 414(d), IRC)
 - deferred compensation plans (§ 457, IRC)
 - tax-deferred annuities (§ 403(b), IRC)

Fraudulent Transfers

- **§ 548(e)**
 - The trustee may avoid any transfer by the debtor to a self-settled trust made within 10 years of the filing of the debtor’s petition and with actual intent to hinder, delay, or defraud a creditor

Substantial Abuse

- **§ 707(b) – Abuse**
 - If the Court finds that granting relief would be an abuse, it may dismiss or, with the debtor’s consent, convert to chapter 13 a chapter 7 case filed by

an individual debtor whose debts are primarily consumer debts

- The Court cannot consider whether the debtor has made or continues to make charitable contributions (up to 15% of gross income)
- If the debtor's current monthly income is greater than the median family income for South Dakota (see below), the U.S. Trustee, the trustee, or any other party in interest may file a motion to dismiss for abuse, and the Court "shall" presume abuse exists, if the debtor's current monthly income, less allowed monthly expenses, less average monthly payments on secured debts, less average monthly payments on priority claims, is not less than the lesser of
 - (1) 25% of the debtor's nonpriority unsecured claims or \$6,000, whichever is greater, OR
 - (2) \$10,000
- Current monthly income equals past six months income divided by six
 - Social Security benefits and certain victim payments are excluded from the debtor's income
- Allowed monthly expenses include –
 - amounts specified under IRS "National Standards" and "Local Standards"
 - actual expenses for categories specified by IRS as "Other Necessary Expenses"
 - reasonably necessary expenses for protection from family violence
 - if reasonable and necessary, an additional allowance for food and clothing of up to 5% of the IRS "National Standards" for food and clothing
 - continued contribution of reasonable and necessary expenses for care and support of family members who are not dependents but cannot support themselves
 - if the debtor is eligible for chapter 13, the chapter 13 trustee's percentage fee

- expenses for each dependent minor child to attend public or private school (NTE \$1,500 per year per child)
 - The debtor must provide documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary and why they are not accounted for in the IRS "National Standards," "Local Standards," or "Other Necessary Expenses"
- allowance for housing and utilities in excess of IRS "Local Standards" for housing and utilities
 - The debtor must provide documentation of such expenses and demonstrate that they are reasonable and necessary
- Average monthly payments on secured debts equal total payments to secured creditors due during the 60 months following the filing of the debtor's petition, plus amount(s) necessary to cure default(s) on debt(s) secured by the debtor's primary residence, motor vehicle, and other property necessary for the support of the debtor and the debtor's dependents, divided by 60
- Average monthly payments on priority claims equal total priority debt divided by 60
- The debtor may rebut the presumption of abuse by demonstrating "special circumstances," e.g., a serious medical condition or a call or order to active duty in the Armed Forces
- The debtor must itemize each additional expense or adjustment to income and provide –
 - documentation for each such additional expense or adjustment to income
 - detailed explanation of the special circumstances that make such expense or adjustment of income necessary and reasonable
- The presumption may only be rebutted if the additional expenses or adjustment to income reduce the debtor's net monthly income below the dollar amounts that initially triggered the presumption (see above)

- The Court cannot dismiss or convert a case on the basis of “means testing” if the debtor is a disabled veteran (38 U.S.C. § 3741(1)) and her indebtedness was occurred primarily while she was on active duty (10 U.S.C. § 101(d)(1)) or performing a homeland defense activity (32 U.S.C. § 901(1))
- If the debtor’s current monthly income is greater than the median family income for South Dakota (see below), the U.S. Trustee, the trustee, or any other party in interest may file a motion to dismiss for abuse, and the Court may find abuse if the debtor filed her petition in bad faith or if the “totality of the circumstances” demonstrates abuse
- If the debtor’s current monthly income is equal to or less than the median family income for South Dakota (see below), only the U.S. Trustee may file a motion to dismiss for abuse, and the Court may find abuse if the debtor filed her petition in bad faith or if the “totality of the circumstances” demonstrates abuse
- According to the U.S. Trustee, for Fiscal Year 2006, the estimated median family income for South Dakota is:
 - for a family of one - \$30,821 per year or \$2,568 per month
 - for a family of two - \$40,350 per year or \$3,363 per month
 - for a family of three - \$49,788 per year or \$4,149 per month
 - for a family of four - \$59,272 per year or \$4,939 per month
 - for each additional family member, add \$6,300 per year or \$525 per month
- **§ 707(b) - Sanctions**
 - An attorney’s signature on a petition, pleading, or written motion constitutes a certification that the attorney –
 - has performed a “reasonable investigation” into the circumstances giving rise to the petition, pleading, or written motion AND
 - has determined that the petition, pleading, or written motion is well grounded in fact and warranted by existing law (or a good faith argument . . .) and does not constitute an abuse under § 707(b)(1)

- An attorney's signature on the debtor's petition constitutes a certification that "the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect"
- If the trustee prevails on a motion to dismiss for abuse and the Court finds that the debtor's attorney's action in filing a chapter 7 case violated Fed.R.Bankr.P. 9011, the Court may order the debtor's attorney to reimburse the trustee for all reasonable costs – including reasonable attorney fees
- If the Court finds that a chapter 7 debtor's attorney violated Fed.R.Bankr.P. 9011, the Court may impose an "appropriate civil penalty" against the debtor's attorney and payable to the trustee or the U.S. Trustee
- If the debtor prevails on a motion to dismiss for abuse filed by a party in interest other than the U.S. Trustee or the trustee, the Court may award the debtor all reasonable costs – including reasonable attorney fees – if it finds that –
 - the position of the party filing the motion violated Fed.R.Bankr.P. 9011 OR
 - the party's attorney failed to perform a reasonable investigation into the circumstances, failed to determine that the motion was well grounded in fact and warranted by existing law (or a good faith argument . . .), and filed the motion solely to coerce the debtor into waiving a right guaranteed under title 11

Redemption

- **§ 722**
- To redeem property, the debtor must pay the full amount of the creditor's allowed secured claim when she redeems the property

Treatment of Certain Liens

- **§ 724**
- The trustee may not pay priority claims – other than those for wages, salaries, commissions, and contributions to an employee benefit plan – with funds that would otherwise be used to pay a properly perfected unavoidable tax lien arising from an ad valorem tax on real or personal property of the

estate

- Before subordinating a tax lien on real or personal property of the estate, the trustee must first exhaust any unencumbered assets of the estate and recover under § 506(c) the reasonable, necessary costs and expenses of disposing of property securing an allowed secured claim

Chapter 7 Discharge

- **§ 727(a)(8)**
 - A chapter 7 debtor is not entitled to a discharge if she received a discharge in a chapter 7 or chapter 11 case filed within **eight** years of the filing of her petition
- **§ 727(a)(11)**
 - A chapter 7 debtor is not entitled to a discharge unless she completes an instructional course concerning personal financial management
 - Exceptions:
 - Debtor is “incapacitated,” “disabled,” or on active military duty in a combat zone
 - The U.S. Trustee determines that no adequate instructional courses are available
- **§ 727(d)(4)**
 - A chapter 7 debtor’s discharge may be revoked for failure to cooperate with the Attorney General’s auditor or failure to explain a material misstatement reflected in an audit
 - Beginning in October 2006, the Attorney General will audit at least 0.4% of individual chapter 7 and 13 cases and any schedules of income and expenses that reflect unusually high income or expenses
 - The purpose of the audits is to “determine the accuracy, veracity, and completeness of petitions, schedules, and other information” the debtor provides

Chapter 11 Property of the Estate

- **§ 1115**
 - In an individual chapter 11 case, property of the estate includes property acquired post-petition and post-petition earnings

Contents of Chapter 11 Plan

- **§ 1123(a)(8)**
 - In an individual chapter 11 case, the debtor's plan must provide for funding using the debtor's post-petition earnings

Confirmation of Chapter 11 Plan

- **§ 1129(a)(15)**
 - If an unsecured creditor objects to confirmation of an individual chapter 11 debtor's plan, the debtor must offer disposable income (as defined in § 1325(b)(2)) for the longer of five years or the term of the plan

Effect of Chapter 11 Confirmation

- **§ 1141(d)(5)**
 - An individual chapter 11 debtor will not receive a discharge until she completes all payments under the plan

Chapter 13 Conversion or Dismissal

- **§ 1307(c)(11)**
 - The debtor's case may be converted or dismissed for failure to make post-petition domestic support obligation payments

Filing of Prepetition Tax Returns

- **§ 1308(a)**
 - No later than the day before the § 341 meeting, the debtor must file with the IRS any required tax returns for the four-year period ending on the date the debtor's petition was filed

- The trustee may continue the § 341 meeting for up to 120 days to allow the debtor to file the returns
 - For any return that was past due when the debtor's petition was filed, the 120 days run from the date of the § 341 meeting
 - For any return that was not past due when the debtor's petition was filed, the 120 days run from the later of the date of the § 341 meeting and the date the return was due (allowing for any permitted extension)
- If the debtor demonstrates that the failure to file the return was due to circumstance beyond her control, the Court may allow the debtor an additional 30 days to file the return(s)

Contents of Chapter 13 Plan

- **§ 1322(b)(4)**
 - If the debtor commits her disposable income for five years, the debtor's plan may provide for less than full payment of domestic support obligations owed directly or assigned to a governmental unit (see § 507(a)(1)(B))
- **§ 1322(b)(10)**
 - Interest may be paid on nondischargeable claims only to the extent the debtor has disposable income with which to pay interest after all allowed claims have been paid in full
- **§ 1322(f)**
 - The debtor's plan may not "materially" alter the terms of a loan from a qualified pension, profit-sharing, stock bonus, or similar plan (see § 362(b)(19))
 - Any amount required to repay a loan from a qualified pension, profit-sharing, stock bonus, or similar plan is not "disposable income" within the meaning of § 1325

Chapter 13 Confirmation Hearing

- **§ 1324(b)**
 - The confirmation hearing may take place no sooner than 20 days after the

§ 341 meeting (not a change in South Dakota) and no later than 45 days after the § 341 meeting

- The Court may hold an earlier confirmation hearing if it determines an earlier confirmation hearing would be in the best interests of creditors – and no one objects

Confirmation of Chapter 13 Plan

- **§ 1325(a)**

- The debtor may not “strip down” a claim –
 - secured by a purchase money security interest in a motor vehicle purchased for the debtor’s personal use within 910 days of the filing of the debtor’s petition OR
 - secured by “any other thing of value” if the debt was incurred within one year of the filing of the debtor’s petition

- **§ 1325(a)(5)**

- Unless a secured creditor agrees to a different treatment or the debtor surrenders the property securing the secured creditor’s claim –
 - The debtor’s plan must provide for a secured creditor’s retention of its lien until the creditor has been paid in full or the debtor has been discharged (whichever comes first)
 - The debtor’s plan must provide for equal monthly payments AND such payments must at least provide the secured creditor adequate protection

- **§ 1325(a)(8)**

- The debtor must be current on all post-petition domestic support obligations before her plan will be confirmed

- **§ 1325(b)**

- In determining the debtor’s “projected disposable income” –
 - the debtor’s “current monthly income” does not include child support

payments, foster care payments, or a dependent child's disability payments

- the "amounts reasonably necessary to be expended" for the "maintenance or support" of the debtor and the debtor's dependents includes domestic support obligations that first become payable after the debtor's petition is filed
 - If the debtor's monthly income is greater than the median family income for South Dakota (see above), the "amounts reasonably necessary to be expended" for the "maintenance or support" of the debtor and the debtor's dependents are determined using the means test under § 707(b)(2)(A) and (B) (see above)
 - If the debtor is required to commit her projected disposable income to make payments to her unsecured creditors, she must commit her disposable income for –
 - 3 years OR
 - not less than 5 years if her current monthly income is not less than the median family income for South Dakota (see above)
- unless the plan provides for payment in full of all unsecured claims over a shorter period

Chapter 13 Payments

- **§ 1326(a)(1)**
 - Within 30 days of the earlier of the filing of the debtor's petition or the filing of the debtor's plan, the debtor must begin making payments that come due post-petition directly to –
 - any lessor of personal property (usually the debtor's automobile)
 - any creditor whose claim is secured by a purchase money security interest in personal property
 - The debtor must provide the trustee proof of all such payments (date and amount)

- § 1326(b)(3)
 - If the chapter 7 trustee was awarded compensation in connection with the conversion or dismissal of the debtor's prior case pursuant to § 707(b), the chapter 13 trustee shall pay any amount remaining unpaid in monthly installments
 - The monthly payments to the trustee can be no more than the greater of (1) \$25 or (2) 5% of the payments to unsecured nonpriority creditors under the plan divided by the number of months in the plan

Chapter 13 Discharge

- § 1328(a)
 - The debtor must certify that she is current on all pre-petition domestic support obligations provided for by the plan and all post-petition domestic support obligations before she may receive a discharge
 - The following debts are no longer dischargeable in a chapter 13:
 - claims for taxes required to be collected or withheld and for which the debtor is liable "in whatever capacity"
 - claims arising from unfiled, late-filed, or fraudulent tax returns
 - claims arising from false pretenses, false representations, actual fraud, or false financial statements
 - unscheduled claims
 - claims arising from fiduciary fraud or defalcation, embezzlement, or larceny
 - claims arising from willful or malicious personal injury or death
- § 1328(f)
 - A chapter 13 debtor is not entitled to a discharge if she received a discharge in a chapter 7, 11, or 12 case filed within **four** years of the filing of her petition
 - A chapter 13 debtor is not entitled to a discharge if she received a discharge

in a chapter 13 case filed within **two** years of the filing of her petition

- **§ 1328(g)**

- A chapter 13 debtor is not entitled to a discharge unless she completes an instructional course concerning personal financial management
- Exceptions:
 - Debtor is “incapacitated,” “disabled,” or on active military duty in a combat zone
 - The U.S. Trustee determines that no adequate instructional courses are available

Web Pages

United States Bankruptcy Court, District of South Dakota

<http://www.sdb.uscourts.gov/>

“25 Changes to Personal Bankruptcy Law”

<http://abiworld.net/bankbill/changes.html>

Bankruptcy Legislation and Reform News

<http://www.bankruptcyfinder.com/bankruptcyreformnews.html>

U.S. Census Bureau

http://factfinder.census.gov/home/saff/main.html?_lang=en

(if you figure out how to determine median family income for South Dakota from this, please let me know)

IRS National and Local Standards

<http://www.irs.gov/individuals/article/0,,id=96543,00.html>